

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

OBEL CRUZ-GARCIA, §
Petitioner, §
§
v. § CIVIL NO. 4:17-cv-03621
§ (Death Penalty Case)
BOBBY LUMPKIN, Director, §
Texas Department of Criminal Justice, §
Correctional Institutions Division, §
Respondent. §

**RESPONDENT'S UNOPPOSED MOTION
TO AMEND SCHEDULING ORDER WITH BRIEF IN SUPPORT**

This is a federal habeas corpus proceeding initiated by Petitioner Obel Cruz-Garcia, a death-sentenced Texas inmate, pursuant to 28 U.S.C. § 2254. On May 4, 2022, Cruz-Garcia filed his second amended petition. ECF No. 73. Pursuant to this Court's scheduling order, ECF No. 65, the Director's dispositive motion or answer is due September 1, 2022. On July 12, 2022, Cruz-Garcia filed an opposed motion for an evidentiary hearing and an opposed motion for discovery. ECF Nos. 74, 75. Under Southern District Local Rule 7.4(A), the Director must respond to the motions by August 2, 2022. However, the Director respectfully requests an extension of time to file his response to both motions, until and including September 1, 2022, the date on which the Director's dispositive motion or answer to Cruz-Garcia's Second Amended Petition is due.

In order to ensure the orderly presentation of the parties' arguments to the Court, the Director, as agreed to by counsel for Cruz-Garcia, respectfully requests that the Court enter an amended scheduling order to reflect the following:

1. On or before **September 1, 2022**, the Director shall file his dispositive motion or answer to Cruz-Garcia's amended petition and his responsive pleading to Cruz-Garcia's motions for an evidentiary hearing and discovery.
2. Within **sixty (60) days** of the date the Director files his dispositive motion or answer and his responsive pleading to Cruz-Garcia's motions for an evidentiary hearing and discovery, Cruz-Garcia shall file his reply to the Director's dispositive motion or answer and his reply in support of his motions for an evidentiary hearing and discovery.
3. By this agreement, the Director does not waive or forfeit any arguments related to the amended petition, including all defenses under Rule 5 or those found under Title 28, nor is it a concession that any motion for stay, discovery or an evidentiary hearing is timely.

The Director respectfully requests that the deadline for his responsive pleading to Cruz-Garcia's motions for an evidentiary hearing and discovery coincide with the deadline for the Director's motion for summary judgment or answer to Cruz-Garcia's amended petition so that the Court can benefit from the Director's responsive pleading to Cruz-Garcia's Second Amended Petition.

See Order 4–5, Balderas v. Lumpkin, No. 4:20-CV-4262 (S.D. Tex. June 1, 2021), ECF No. 25 (“At this early stage, the litigation has not developed

sufficiently to evaluate what Balderas must show to obtain habeas relief, if habeas *review* is even available. This Court will not possess sufficient information to decide whether additional factual review is permitted or necessary until Balderas files his amended petition and Respondent answers.”) (emphasis in original, citations omitted).

In support of the Director’s Unopposed Motion for an Amended Scheduling Order, the undersigned attorney was out of the country on the date of Cruz-Garcia’s filing and did not return from pre-scheduled leave until July 18, 2022. Additionally, the undersigned will be out of the office from July 27, 2022, and returning on August 1, 2022, to attend the 2022 Association of Government Attorneys in Capital Litigation Conference.

This motion is unopposed by Cruz-Garcia’s counsel. This request is not designed to harass Cruz-Garcia, nor to unnecessarily delay these proceedings, but to ensure that Cruz-Garcia’s pleadings are properly addressed. Accordingly, the Director requests that the scheduling order is amended as agreed to by the parties.

CONCLUSION

For the foregoing reasons, the Director respectfully requests that this Court amend the deadlines set out by S.D. LR7.4(A) and adopt the proposed schedule agreed to by the parties.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

CERTIFICATE OF CONFERENCE

Counsel for Cruz-Garcia has indicated that he is not opposed to this motion.

s/ Cara Hanna
CARA HANNA
Assistant Attorney General

CERTIFICATE OF SERVICE

I do hereby certify that on July 27, 2022, I electronically filed the foregoing document with the Clerk of the Court for the U.S. District Court, Southern District of Texas, using the electronic case-filing system of the Court. The electronic case-filing system sent a “Notice of Electronic Filing” (NEF) to the following counsel of record, who consented in writing to accept the NEF as service of this document by electronic means:

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